

## REMARKS

Reconsideration and withdrawal of the rejections set forth in the Office action dated December 28, 2004 are respectfully requested. Accompanying this Amendment is a Request for Continued Examination Under 37 C.F.R. § 1.114. Applicants petition the Commissioner for a 3-month extension of time. A separate petition accompanies this amendment.

Following entry of the above amendments, claims 1-24 stand cancelled, claim 25 is pending, and claims 26-33 are provisionally withdrawn.

### I. The Amendments

Claim 25 is amended to recite "a polypeptide derived from the carboxy-terminal 549 amino acids of HEV open reading frame 2 and nucleic acid sequences that are selectively hybridizable thereto." Basis for this amendment can be found, for example on page 15, line 2.

No new matter is added by way of these amendments.

Applicants submit that claims 25-33 are in condition for immediate allowance. The following remarks address the Examiner's comments in the Office Action in the order presented in the Office Action.

### II. Election and Restriction

Claims 26-33 were withdrawn from consideration by the Examiner as allegedly directed to a non-elected invention. Applicants respectfully disagree.

In a communication mailed May 1, 2002 ("Communication"), the Examiner divided the claims into three groups and Applicants elected Group I for immediate prosecution. According to the Examiner, the claims of Group I were "drawn to nucleic acid, vector, expression system, method of use ...." (see page 2 of the Communication). Claims 26-33 are directed to the subject matter under Group I as defined by the Examiner. The Examiner's allegation that the subject matter of claims 26-33 has no "discernable structural and/or functional relationship to the" subject matter of elected Group I is incorrect.

For example, claim 25 refers to SEQ ID NOS 15 and 16. Claims 26-29 refer to SEQ ID NOS 13 and 14. Claims 30-33 refer to SEQ ID NOS 17 and 18. These SEQ ID NOS have structural and functional relationship because SEQ ID NOS 13 and 14 are directed at the entire protein encoded by ORF2 (application, page 21, lines 13-15) and SEQ ID NOS 15-18 are directed at proteins included in ORF2 (application, page 21, lines 17-23; Figure 1).

Applicants therefore request that the withdrawal of claims 26-33 be revoked and the claims be examined.

III. Rejections under 35 U.S.C. §112, first paragraph

Claim 25 was rejected under 35 U.S.C. § 112, first paragraph, for lack of written description. Specifically, the Examiner alleges that a recitation of "amino acid sequences that are at least 70% homologous" would encompass certain subject matter not sufficiently described. Without acquiescing in this rejection and the reasons given therefor, Applicants respectfully submit that Claim 25, as amended, is fully described in the application. Specifically, the Examiner is directed to page 15, lines 1-17 where conditions for determining selectively hybridizable sequences are recited. Accordingly, Applicants request withdrawal of this rejection.

IV. Rejections under 35 U.S.C. §102

Claim 25 was rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Genseq database accession No: AAQ27436. Without acquiescing to this rejection and the reasons given therefor, claim 25 has been amended with entry of this Amendment and the rejection is thereby moot. Therefore, Applicants respectfully request withdrawal of this rejection.

V. Conclusion

Applicants respectfully submit that pending claims 25-33 are in condition for immediate allowance. The undersigned invites the Examiner to call (650) 838-4410

with any questions or comments. The Commissioner is hereby authorized and requested to charge any deficiency in fees herein to Deposit Account No. 50-2207.

Respectfully submitted,  
Perkins Coie LLP

Date:

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